

Appellate Court Decisions - Week of 12/21/15

First Appellate District of Ohio

State v. Wogenstahl, 2015-Ohio-5346

New Trial

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5346.pdf>

Summary from the First District:

“The common pleas court abused its discretion in overruling defendant's Crim.R. 33(B) motion for leave to file a motion for a new trial on the ground of newly discovered evidence, because the evidence offered in support of the motion could not have been discovered within the time prescribed by the rule. But defendant could not be said to have been prejudiced by the denial of leave to move for a new trial, because the record did not disclose a strong probability that the newly discovered evidence would change the outcome if a new trial were granted.”

State v. Daniels, 2015-Ohio-5348

Theft: Crim.R.11: Pleas: Sentencing: Restitution

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/1/2015/2015-Ohio-5348.pdf>

Summary from the First District:

“The defendant failed to demonstrate that his guilty plea to a petty-misdemeanor-theft offense was invalid; the more elaborate procedures for accepting guilty pleas in felony and in serious misdemeanor cases did not apply.

“The amount of restitution in misdemeanor offenses is limited by R.C. 2929.28(A)(1) to ‘the amount of economic loss suffered by the victim as a direct and proximate result of the commission of the offense.’

“The trial court erred by ordering restitution in an amount greater than \$999; although the victim established by a preponderance of the evidence economic loss in a greater amount, that economic loss was demonstrated only with evidence concerning the replacement value of the business property that was the subject of the first-degree-misdemeanor-theft offense, which by definition involved the theft of property with a replacement value of less than \$1000.

“The defendant cannot demonstrate that the trial court erred by ordering restitution without first considering his ability to pay as required by R.C. 2929.19(B)(5), because that statute only applies when restitution is ordered in felony cases, and because the record demonstrates that the trial court did actually consider the defendant’s ability to pay the restitution.”

Second Appellate District of Ohio

State v. Huber, 2015-Ohio-5301

Drug Possession: Bulk Amounts: Sufficiency: Weight

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-5301.pdf>

Appellant’s convictions for possession of methadone in at least five times the bulk amount, possession of oxycodone in at least five times the bulk amount, and possession of acetaminophen with codeine phosphate in at least five times the bulk amount were based on insufficient evidence where the state only presented evidence of the number of pills possessed, not the weight of the drugs possessed. The Second District reversed and remanded for the convictions to be modified to lesser offenses.

State v. Johnson, 2015-Ohio-5302

Ineffective Assistance

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2015/2015-Ohio-5302.pdf>

Appellant allegedly was the lookout for a home invasion robbery that resulted in a murder. One of the people involved in the actual home invasion robbery and murder, as part of his plea agreement, was to testify against appellant. However, on the day of trial, even after testifying in the trials of others involved in this incident, the witness claimed to not know appellant and that appellant was not involved. The state had the witness called as a hostile witness and impeached him extensively, more or less reading his entire statement to him line by line and asking if he said those things. The same thing happened with a second witness too. This is a fact-specific case, but it is important nonetheless. The Second District said: “The trial court did err in allowing the State to impeach the hostile witness and court’s witness through extensive questioning about the specific, detailed aspects of their prior statements, such that the manner of impeachment

amounted to the presentation of substantive evidence. The court also erred in allowing the State to call a detective to provide extrinsic evidence of a witness's prior statements; there was no proper evidence of those prior statements before the court, such that impeachment was appropriate. Error was not harmless, notwithstanding [appellant's] confession, because the prior statements of the other witnesses cast Defendant in a more culpable light than his own confession."

Third Appellate District of Ohio

Nothing new.

Fourth Appellate District of Ohio

Nothing new.

Fifth Appellate District of Ohio

Nothing new.

Sixth Appellate District of Ohio

Nothing new.

Seventh Appellate District of Ohio

Nothing new.

Eighth Appellate District of Ohio

State v. Lopez, 2015-Ohio-5269

Sentencing: Community Control

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5269.pdf>

Appellant's 11-month prison sentence for fifth-degree felony drug possession was contrary to law. Appellant was originally placed in the intervention in lieu of conviction program. After he violated the terms of that program, he was sentenced to 11 months in prison. However, there is a presumption in favor of community control sanctions for fourth- or fifth-degree felonies meeting certain criteria in R.C. 2929.13(B)(1)(a). That presumption can be overcome if a trial court makes certain findings under

R.C. 2929.13(B)(1)(b). Here, appellant's drug conviction was a fifth-degree nonviolent felony. He had not previously been convicted of a felony offense. This was his first felony offense. He had never been convicted of a misdemeanor offense of violence. The trial court made no request to the department of rehabilitation and correction pursuant to R.C. 2929.13(B)(1)(c). The trial court also did not explicitly make any of the R.C. 2929.13(B)(1)(b)(i)-(xi) findings on the record to overcome the presumption of community control. The only reason for the prison sentence was violating the intervention in lieu of conviction terms. Therefore, his prison sentence was contrary to law.

State v. Delgado, 2015-Ohio-5256

Sealing: R.C. 2953.52

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2015/2015-Ohio-5256.pdf>

Summary from the Eighth District: "Trial court erred in denying defendant's third R.C. 2953.52 application to seal the record because the trial court did not hold the hearing required by R.C. 2953.52 and applied the wrong statute in ruling on defendant's application. Res judicata did not bar consideration of defendant's petition because the state did not raise the defense in the trial court and its application would work an injustice in these circumstances."

Ninth Appellate District of Ohio

Nothing new.

Tenth Appellate District of Ohio

State v. Mustafa, 2015-Ohio-5370

Motion to Dismiss: Indictment: R.C. 3719.01

Full Decision:

<http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2015/2015-Ohio-5370.pdf>

Summary from the Tenth District: "The trial court properly granted the defendants' motion to dismiss the indictments, as Ohio law did not clearly prohibit trafficking or possessing AM2201 ['spice'] or a-PVP as controlled substance analogs at the times defendants allegedly trafficked and/or possessed these substances."

Eleventh Appellate District of Ohio

Nothing new.

Twelfth Appellate District of Ohio

Nothing new.

Supreme Court of Ohio

Nothing new.

Sixth Circuit Court of Appeals

Nothing new.

Supreme Court of the United States

Nothing new.